

COALITION FOR SUSTAINABLE CEMENT MANUFACTURING & ENVIRONMENT  
1029 J Street, Suite 300, Sacramento, CA 95814

February 13, 2009

Ms. Mary Nichols  
Chair, California Air Resources Board  
1001 "I" Street  
Post Office Box 2815  
Sacramento, California 95812

Subject: California Cement Industry's Comments on the AB 32 Administrative Fee Regulation

Dear Ms. Nichols,

The Coalition of Sustainable Cement Manufacturing and Environment ("CSCME"), a coalition of six cement manufacturers operating the 11 cement plants in California,<sup>1</sup> would like to take the opportunity to comment on the California Air Resources Board ("CARB") proposed Administrative Fee Regulation for The Global Warming Solutions Act of 2006 ("AB 32").

These comments are based on the Administrative Fee Regulation proposal as presented in the Scoping Plan and in the recent workshop held on January 27, 2009. Based on the available information, CARB is essentially proposing what would amount to 50 to 100 percent increase in the amount of fees that California cement producers *already* pay to CARB for other environmental programs, while excluding both imported cement and 25 percent of the other California sources of greenhouse gas ("GHG") emissions from the impact of these additional anti-competitive costs. By favoring imported cement that is not subject to the same stringent environmental regulations (if any) faced by California producers, CARB would invite significant leakage that may undermine the fundamental objectives of AB 32, and by exempting one quarter of GHG emission sources in California, CARB would act inconsistently with the guiding principle of equity set forth in AB 32.

Under AB 32, CARB is required to minimize leakage<sup>2</sup> – an increase in GHG emissions outside of the state that is caused by a shift of California consumption to imported products with a higher GHG footprint, thereby partially offsetting or potentially reversing the GHG emissions reductions achieved within California. This requirement applies to CARB's development of a comprehensive regulatory structure, but CARB cannot ignore this requirement when taking other action, such as imposing an administrative fee, if doing so would directly conflict with this obligation and would undermine the fundamental climate change objectives of AB 32.

CARB addressed the issue of leakage in the Scoping Plan, noting that differing environmental standards can cause production to shift outside of California, thereby causing emissions to "remain unchanged or

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<sup>1</sup> The Coalition includes Cemex, Inc., National Cement Company of California Inc., California Portland Cement Company, Mitsubishi Cement Corporation, Texas Industries, Inc. and Lehigh Southwest Cement Company.

<sup>2</sup> AB 32 § 38562(b)(8).

even increase”<sup>3</sup> and resulting in “reduced employment and economic activity in California without reducing overall greenhouse gas emissions.”<sup>4</sup> Emissions leakage results in a fundamental policy failure by erasing the climate change gains achieved by the state’s policies while also harming California’s economy. Certain industries, such as cement, are particularly vulnerable to leakage due to the fungible nature of the product, significant global competition, and the consequent inability to pass through costs to consumers. Under such conditions, even seemingly small differences in costs resulting from local or state policies can result in large shifts in market share to imported cement and significant emissions leakage.

The California cement industry is already subject to regulatory costs that substantially exceed those faced by producers outside California, including higher environmental compliance costs, higher labor costs, and higher fuel costs. As CSCME has stated in previous comments, the implementation of AB 32 will lead to an exponential increase in existing regulatory and energy costs (which are already among the highest in the world) that will create a significant competitive disadvantage for California cement producers. According to the Scoping Plan, these cumulative costs will include:

- A cap-and-trade program (if included)
- Command-and-control regulations, including:
  - (A) A carbon intensity factor
  - (B) Energy efficiency/co-benefit audits
  - (C) Vehicle modifications/efficiency/design
- Carbon fees, including:
  - (A) A potential direct carbon fee
  - (B) Administrative program fees to CARB
  - (C) Administrative program fees proposed by local air districts
- Increased electricity prices
- Increased energy and fuel prices.<sup>5</sup>

The California cement industry has highlighted in previous comments that there is growing international recognition of the cement industry’s significant susceptibility to leakage, particularly under the current economic conditions. Each and every additional cost that the numerous regulatory programs add to the cost of doing business in California threatens to eventually displace California manufacturers with foreign production.

As CSCME has noted in the past, in order to effectively address the leakage problem, CARB must design regulations that impose equal costs and burdens on all products consumed in California, whether originating from in-state or out-of-state producers. The burden of applying the administrative fee to imported products will be minimal. CARB could select only the subset of imported products for which the risk of leakage is significant, such as cement. For products imported from outside of California, CARB could apply a default or individually-calculated administrative fee at the point of resale into the California market based on procedures applicable to California producers.

Importantly, the fact that the administrative fee may subjectively appear low on a per unit basis does not eliminate the significant risk of leakage for industries like cement. Given the enormous regulatory

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<sup>3</sup> See Scoping Plan at 31.

<sup>4</sup> See Scoping Plan at C-16.

<sup>5</sup> CSCME, *Tradable Performance Standards: A Policy Framework for Effectively, Efficiently & Equitably Regulating GHG Emissions in the California Cement Industry* (September 8, 2008), 6.

burden already facing California producers and the unique competitive conditions in the isolated California cement market (*i.e.*, a globally-competitive commodity product sold on the basis of price with no ability to pass-through higher costs), CARB's proposal to significantly increase the fees charged to California cement producers as indicated earlier, will further erode the industry's ability to compete with imports that are exempt from the administrative fees especially when taking into account the cumulative costs associated with existing regulations and new AB 32 measures.

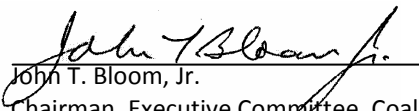
Notably, CARB's current proposal to apply administrative fees to sources emitting a total of only 75 percent of all California emissions is inconsistent with statutory language. AB 32 clearly requires CARB to apply any fee to *all* sources of GHG emissions, regardless of their relative contribution to the state's overall emission levels. CARB must therefore also apply the administrative fees to the sources of the remaining 25 percent of overall emissions in order to ensure that the burden is shared equitably as envisioned under AB 32.

CSCME urges CARB to apply any administrative fees equally to all products consumed in California where there is a significant risk of leakage and to all types of emissions sources. The application of fees to imports is expressly permitted under World Trade Organization rules (*e.g.*, under GATT Article VIII as a fee in connection with importation or under GATT Article II:2(a) as a border tax adjustment) and an across-the-board application of fees to all emissions sources would ensure the equitable application of these new costs on California industry.

CSCME's primary issue on the potential administrative fee is maintaining equity and fairness. Treating the product, regardless of source, on an identical basis ensures that nobody receives an unfair advantage merely on the basis of location. Subjecting domestic production to additional costs and not foreign produced products exposes our industry to carbon leakage, which is inconsistent with the goals of environmental effectiveness and equity. We urge CARB to continue to recognize and incorporate these goals at every step of regulatory development.

Thank you for your consideration of these comments.

Sincerely yours,



John T. Bloom, Jr.  
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